

Article 2 | Review Authority

Sec. 2.1 Governing Bodies

2.1.1 Defined

The governing bodies identified in the text of this Ordinance as having authority to enforce certain provisions of this Ordinance are:

A. Durham County Board of Commissioners

The Durham County Board of Commissioners (hereinafter referred to as the Board of Commissioners) for property located within Durham County but located outside of any City limits.

B. Durham City Council

The Durham City Council for property located within the City limits of the City of Durham.

2.1.2 Powers and Duties

The governing bodies shall be responsible for final action regarding the following:

- A.** Amendments to the adopted Comprehensive Plan;
- B.** Amendments to the text of this Ordinance;
- C.** Applications for zoning map changes;
- D.** Applications for major site plans;
- E.** Applications for historic district/landmark designation;
- F.** Applications for major special use permits and TIA special use permits; and
- G.** Vested rights determinations that require a public hearing pursuant to Sec. 3.21, Statutory Vested Rights Determination.

Sec. 2.2 Joint City-County Planning Committee (JCCPC)

2.2.1 Establishment

The Joint City-County Planning Committee (JCCPC) is established in accordance with the Interlocal Cooperation Agreement on City-County Planning.

2.2.2 Membership

Members of the JCCPC shall be appointed in accordance with the Interlocal Cooperation Agreement on City-County Planning.

2.2.3 Powers and Duties

- A.** The power and duties of the JCCPC shall be in accordance with the Interlocal Cooperation Agreement on City-County Planning.
- B.** The JCCPC shall also be responsible for review and recommendation regarding amendments to the text of this Ordinance that affect both the City and County jurisdictions.
- C.** The JCCPC shall be responsible for review of the Administrative Guidelines established by the Planning Director governing neighborhood meetings pursuant to Sec. 3.2.3, Neighborhood Meeting. The guidelines for establishing Neighborhood Protection Overlays pursuant to Sec. 4.5.2, Establishment of Overlay, and the Durham Design Manual established pursuant to Sec. 4.8.3, Design Guidelines.

Sec. 2.3 Planning Commission

2.3.1 Establishment

The Durham Planning Commission was created by the Board of Commissioners and the City Council on July 1, 1988 in accordance with the Interlocal Cooperation Agreement on City-County Planning.

2.3.2 Membership, Terms and Compensation

Planning Commission numbers, composition, terms, vacancies, removals, and compensation shall be in accordance with the Interlocal Cooperation Agreement on City-County Planning.

2.3.3 Officers, Meetings, Quorum

Planning Commission officers, meetings, quorum, and rules of procedure shall be in accordance with the Interlocal Cooperation Agreement on City-County Planning and consistent with State statutes.

2.3.4 Rules of Procedure

The Planning Commission shall adopt rules of procedure for the conduct of its business, consistent with state law and this Ordinance.

2.3.5 Powers and Duties

The Planning Commission shall have the following powers and duties.

A. Review Authority

- 1.** The Planning Commission shall be responsible for reviewing and making recommendations (which shall be construed as meeting the certification required by NCGS §153A-344) regarding the following:
 - a.** Adoption of or amendments to the Comprehensive Plan and related plans;
 - b.** Amendments to the text of this Ordinance, unless the amendment proposes to establish a moratorium on development within the City, in which case the Planning Commission shall not be required to review or make a recommendation on the change;
 - c.** Applications for zoning map change;
 - d.** Applications for historic district/landmark designation;
 - e.** Adoption of or amendment to redevelopment plans as set forth in NCGS §160A-513; and
 - f.** The Planning Department Annual Work Plan.
- 2.** All decisions and recommendations of the Planning Commission shall require an affirmative vote. Tie votes shall be considered decisions or recommendations for denial.
- 3.** The Planning Commission shall perform related duties as directed by the governing bodies.

- 4.** The Planning Commission may exercise additional powers as may be described elsewhere in this Ordinance and as permitted by the Interlocal Cooperation Agreement on City-County Planning.

B. Annual Report

The Planning Commission shall prepare an annual report and submit it to the Board of Commissioners and the City Council. The annual report shall include a comprehensive review of the Planning Commission's activities, problems, and actions of the Planning Commission and any budget requests or other recommendations.

Sec. 2.4 Board of Adjustment (BOA)

2.4.1 Establishment

The Board of Adjustment is established in accordance with the Interlocal Cooperation Agreement on City-County Planning and NCGS §160A-388, NCGS §153A-345, and in accordance with special legislation adopted for the City and County regarding the Board of Adjustment.

2.4.2 Membership, Terms and Compensation

The Board of Adjustment shall consist of seven members and three alternates. Its composition, terms, vacancies, removals, and compensation shall be in accordance with the Interlocal Agreement on City-County Planning.

2.4.3 Officers, Meetings, Quorum

Board of Adjustment officers, meetings, quorum, and rules of procedure shall be in accordance with the Interlocal Cooperation Agreement on City-County Planning, and the following:

A. Meetings

Meetings shall be held at such times and places as the Board of Adjustment shall determine. All meetings shall be open to the public and shall conform to the North Carolina Open Meetings Law, Chapter 143, Article 33C of the North Carolina General Statutes.

B. Minutes

The Board of Adjustment shall keep minutes of the meetings which record the vote of each member and all abstentions from voting.

C. Quorum

The presence of five Board of Adjustment members shall be necessary for a quorum. A quorum is necessary to take official action. A roll call vote shall be taken upon the request of any member.

D. Computation of Membership

Membership of the Board of Adjustment, for purposes of determining application of the 3/5ths voting requirement for decisions, as allowed by special legislation, shall be considered to be seven members as long as the combined members and alternates who have been appointed by the governing bodies equals at least seven. In the event that unfilled regular and alternate seats on the Board and/or conflicts of interest cause the number of potentially available members for a hearing to fall below seven, the membership shall be considered to be the number of filled positions less the number of members who have a conflict of interest.

E. Rules of Procedure

The Board of Adjustment shall adopt rules of procedure for the conduct of its business, consistent with state law, special legislation, the City/County Interlocal Agreement and this Ordinance.

2.4.4 Powers and Duties

The Board of Adjustment shall have the following powers and duties.

A. Authority

- 1.** The Board of Adjustment shall be responsible for final action regarding the following:
 - a.** Applications for variances; and
 - b.** Applications for minor special use permits.
 - c.** Appeals of decisions made by administrative officials interpreting the provisions of this Ordinance.
- 2.** The Board of Adjustment shall perform related duties as directed by the governing bodies.

B. Annual Report

The Board of Adjustment shall prepare an annual report and submit it to the Board of Commissioners and the City Council. The annual report shall include a comprehensive review of the activities, problems, and actions of the Board of Adjustment and any budget requests or other recommendations.

2.4.5 Decisions

- A.** An affirmative vote of 3/5ths of the members of the Board of Adjustment shall be required to grant a special use permit or variance, or to overturn an administrative decision. Board members disqualified from voting and vacant positions shall not be calculated in the requisite 3/5ths majority. Voting requirements for written decisions, where required, and for other actions shall be as specified in the Board's *Rules of Procedure*.
- B.** Every decision of the Board of Adjustment shall be subject to review by a court of competent jurisdiction in the nature of a petition for a writ of *certiorari*. Any petition for review by the court shall be filed with the clerk of court within 30 days after the decision of the Board of Adjustment is filed in the office of the clerk of the Board of Adjustment, or after a written copy is delivered to the appealing party who has made a request for such decision in compliance with paragraph C. below, whichever is later.
- C.** Any party desiring a copy of the decision of the Board of Adjustment shall file a written request with the Planning Department at the time of the hearing. Such decisions shall be delivered by personal service or by registered mail or certified mail, return receipt requested.
- D.** Written decisions shall be considered filed with the clerk of the Board of Adjustment on the date that the final necessary signature on such decision is obtained and the decision is ready for distribution.

Sec. 2.5 Historic Preservation Commission (HPC)

2.5.1 Establishment

The Durham Historic Preservation Commission (HPC) is established in accordance with NCGS §160A -400.7. The HPC is designated as the historic preservation advisory and quasi-judicial body for the County and City, and shall have the powers and duties described in this section.

2.5.2 Membership, Terms and Compensation

A. Numbers

The HPC shall consist of nine members. All County appointees shall be residents of Durham County and all City appointees shall be residents of the City.

B. Composition

1. A majority of the members of the HPC shall have demonstrated special interest, experience or education in history or architecture.
2. The HPC shall always include at least one of each of the following five designations:
 - a. Registered architect;
 - b. Registered landscape architect;
 - c. Social or cultural historian;
 - d. Representative of a lending institution or an attorney; and
 - e. Real estate agent, developer or builder.
3. The five designated members shall be appointed as follows:
 - a. The Board of Commissioners shall appoint a landscape architect, a social or cultural historian and a representative of a lending institution or an attorney; and
 - b. The City Council shall appoint an architect and a real estate agent, builder, or developer.
4. The HPC shall also include four at-large members, as follows:
 - a. Two of the at-large members shall be appointed by the Board of Commissioners; and
 - b. Two of the at-large members shall be appointed by the City Council, one of whom shall be selected by the Mayor.
5. In making appointments to the HPC, the Board of Commissioners and the City Council shall:
 - a. Give special preference to current members, to provide continuity in historic preservation planning;
 - b. Make a reasonable effort to provide representation for both urban and rural interests among geographic areas; and

- ### C. Terms

- ### D. Vacancies

E. Compensation of Members

2.5.3 Organization, Meetings, Quorum

A. Officers

B. Meetings

C. Minutes

D. Quorum

E. Rules of Procedures

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F. Removal

Any member of the HPC who misses three consecutive regular meetings or one-half of the regular meetings in a calendar year without an excuse approved by the HPC shall be considered to have resigned from membership on the HPC. In this event, the HPC shall notify the governing body that appointed the member, so that the governing body can appoint a replacement member.

2.5.4 Powers and Duties

The HPC is authorized and empowered to undertake such actions reasonably necessary to discharge and conduct its duties and responsibilities.

A. General Authority

The HPC shall act to promote, enhance and preserve the character and heritage of the Durham community. The HPC has the following general authority:

- 1.** To undertake inventories in Durham County of properties of historical, architectural or archaeological significance.
- 2.** To sponsor or conduct educational programs regarding Historic Districts or Historic Landmarks.
- 3.** To give advice to property owners concerning the treatment of the historical and visual characteristics of his or her property located within any Historic District or designated as an Historic Landmark, such as color schemes, gardens and landscape features, and minor decorative elements.
- 4.** To cooperate with the State, Federal and local governments in historic preservation matters.
- 5.** To enter, solely in the performance of its official duties and only at reasonable times and only with the consent of the property owner, upon private land for the examination or survey of the property. However, no member, employee or agent of the HPC may enter any private building or structure without the express consent of the occupants or owner.
- 6.** Recommend to the Board of Commissioners and/or the City Council the following:
 - a.** Areas to be designated by ordinance as Historic Districts;
 - b.** The designation of any Historic District be revoked or removed;
 - c.** Buildings, structures, sites, areas or objects within their relative areas of zoning jurisdiction to be designated by ordinance as Historic Landmarks;
 - d.** The designation of any building, structure, site, area, or object as an Historic Landmark be removed;
 - e.** Other means of preservation and intervention at such times as vital historic resources appear, in the view of the HPC, to be threatened by neglect, use, demolition, or alteration; and
 - f.** Changes to the City-County Interlocal Agreement which establishes the HPC, or any other related County and City ordinances, and to propose new ordinances relating to Historic Districts, Historic Landmarks or the total program for the development and preservation of historic resources of Durham and its environs.

B. Demolition by Neglect

For purposes of Sec. 3.19, Demolition by Neglect (City Only), the Historic Preservation Commission is designated a Planning Agency under GS 160A-361 and GS 153A-345 authorized to operate as a Board of Adjustment (BOA) and make quasi-judicial decisions under GS 160A-388(a) and GS 153A-321 for the administrative determinations described herein.

C. Review Authority

The HPC shall be responsible for reviewing and making recommendations regarding applications for historic/landmark designations.

D. Final Authority

The HPC shall be responsible for final action regarding applications for certificates of appropriateness.

E. Annual Report

The HPC shall prepare an annual report and submit it to the Board of Commissioners and the City Council. The annual report shall include a comprehensive review of the HPC's activities, problems, and actions of the HPC and any budget requests or other recommendations.

2.5.5 Decisions

A. An affirmative vote of a majority of members present and voting shall be required for all actions except as noted below.

B. The voting requirements applicable to the Board of Adjustment in Sec. 2.4.5, Board of Adjustment Decisions, shall be used for HPC decisions when the HPC is functioning as a Board of Adjustment under Sec. 3.19, Demolition by Neglect (City Only).

Sec. 2.6 Development Review Board (DRB)

2.6.1 Establishment

The Development Review Board is the technical planning agency for the City of Durham and Durham County and is responsible for site plan and subdivision review in accordance with the provisions of this Ordinance.

2.6.2 Designation

A representative of a department or agency eligible to vote on all items shall serve as chair of the Development Review Board and shall be responsible for all final decisions of the Board.

2.6.3 Membership, Organization and Meetings

A. Composition

The Development Review Board shall be comprised of the following members from the Agencies and Departments, as appropriate:

1. Eligible to vote on all matters

- a. A representative of the Durham Planning Commission;
- b. A representative of the Durham Open Space and Trails Commission;
- c. A representative of the Durham Bicycle and Pedestrian Advisory Committee;
- d. A representative of the City/County Planning Department;
- e. A representative of the City/County Inspections Department;
- f. A representative of the City Engineering Division;
- g. A representative of the City Transportation Division;
- h. A representative of the County Sedimentation and Erosion Control Division; and
- i. A representative from the North Carolina Department of Transportation, who may vote only on items affecting State roads.

2. Eligible to vote on matters under City Jurisdiction

A representative of the City Stormwater Division.

3. Eligible to vote on matters under County Jurisdiction

A representative of the County Stormwater Division.

B. Quorum

A quorum is necessary to take official action. A roll call vote shall be taken upon the request of any member.

1. The presence of six eligible representatives shall be necessary for a quorum regarding matters under either jurisdiction.

C. Meetings

Meetings shall be held at least twice monthly and more frequently if felt necessary by the Development Review Board.

D. Rules of Procedures

The Development Review Board shall adopt rules of procedure for the conduct of its business.

2.6.4 Powers and Duties

The Development Review Board shall have the following powers and duties.

A. Authority

- 1.** The Development Review Board, through its chair, shall be responsible for reviewing and making recommendations regarding major site plans.
- 2.** The Development Review Board, through its chair, shall be responsible for final action regarding the following:
 - a.** Applications for minor site plan review; and
 - b.** Applications for subdivision review.
- 3.** The Development Review Board shall perform duties as directed by the governing bodies.

B. Annual Report

The Development Review Board shall prepare an annual report and submit it to the Board of Commissioners and the City Council. The annual report shall include a comprehensive review of the activities, problems, and actions of the Development Review Board and any budget requests or other recommendations.

2.6.5 Decisions

An affirmative vote of a majority of the eligible members of the Development Review Board present and voting shall be required for all actions.

Sec. 2.7 Design District Review Team (DDRT)

2.7.1 Establishment

The Design District Review Team assists in protecting the local architectural heritage and preserving the considerable economic investments that have occurred over the years. The DDRT process seeks to encourage renovation and new development in a manner that will promote visual harmony, historical integrity and creative design solutions.

2.7.2 Membership, Organization and Meetings

A. Composition

The DDRT shall be comprised of the following members:

- 1.** A representative from the General Services Department;
- 2.** A representative from the Public Works Department;
- 3.** Two representatives from the Planning Department with expertise in urban design, historic preservation, or design review;
- 4.** A representative from the Office of Economic and Employment Development;
- 5.** Two citizen appointees, one being appointed by the City Council and the other being appointed by the Board of Commissioners preferably with expertise in a design field such as architecture, landscape architecture, or urban design;
- 6.** A representative from the Durham City/County Appearance Commission; and
- 7.** In submittals where street trees within the right-of way are proposed, an additional member designated by the Public Works Director with expertise in urban forestry.

B. Terms

Citizen members shall be appointed by the City Council or Board of Commissioners as appropriate, for staggered two-year terms, and may serve a maximum of three consecutive terms.

C. Meetings

Meetings shall be held on an as-needed basis.

D. Rules of Procedures

The DDRT shall adopt rules of procedure.

2.7.3 Powers and Duties

The DDRT shall have the following powers and duties:

A. Review Authority

- 1.** The DDRT shall be responsible for reviewing and making recommendations regarding proposals for site plan review approval in the DDO, the Transitional Use Area of the UC District, any Overlay established pursuant to Sec. 4.5, Neighborhood Protection Overlay, and any other design districts to assure compliance with all applicable design guidelines.

Sec. 2.7 Design District Review Team (DDRT)

- 2.** The DDRT shall be responsible for reviewing and making recommendations on proposed variations to common signage plans in the Downtown and Compact Neighborhood Tiers and the MU District.
- 3.** As necessary, the DDRT shall periodically review and make recommendations regarding any necessary changes to the Design Manual.

B. Annual Report

The DDRT shall prepare an annual report and submit it to the Board of Commissioners and the City Council. The annual report shall include a comprehensive review of the activities, problems, and actions of the DDRT and any budget requests or other recommendations.

2.7.4 Decisions

An affirmative vote of a majority of the eligible members of the DDRT present and voting shall be required for all actions.

Sec. 2.8 Other Advisory Bodies

A variety of other commenting or advisory bodies approved by a governing body may participate in development review under this Ordinance, including, but not limited to:

- A.** The Durham Open Space and Trails Commission;
- B.** The Durham Environmental Affairs Board;
- C.** The Durham City/County Appearance Commission; and
- D.** The Durham Bicycle and Pedestrian Advisory Commission.

Sec. 2.9 Durham City-County Planning Department

2.9.1 Establishment

The Durham City-County Planning Department is established in accordance with NCGS §153A-321 and NCGS §160A-361, and serves as the planning agency and the community development agency for the City of Durham and Durham County. The Department administers this Ordinance for the City and County.

2.9.2 Planning Director

The Planning Director is designated as head of the Durham City-County Planning Department and shall be responsible for administering the provisions of this Ordinance as set forth in this section.

2.9.3 Delegation of Authority

The Planning Director may designate any staff member to represent the Director in any function assigned by this Unified Development Ordinance. The Director shall remain responsible for any final action.

2.9.4 Powers and Duties

The Planning Director or designee shall have the following powers and duties.

A. The Planning Director or designee is designated to perform the following duties:

- 1. Make studies of the area within the planning jurisdiction and surrounding areas;**
- 2. Determine objectives to be sought in the development of the study area;**
- 3. Prepare plans for achieving these objectives;**
- 4. Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;**
- 5. Advise the governing bodies concerning means for carrying out plans or amending plans;**
- 6. Accept, receive and disburse funds, grants, and services made available by the Federal government or the State government used in the furtherance of departmental functions;**
- 7. Administer zoning and subdivision regulations and other related land use controls;**
- 8. Exercise any functions in the administration and enforcement of various means for carrying out plans that the governing bodies may direct;**
- 9. Develop, approve, and implement design guidelines;**
- 10. Develop, approve, and implement administrative procedures and guidelines to execute the provisions of this Ordinance; and**
- 11. Perform any other related duties that the governing body may direct.**

B. The Planning Director or designee shall be responsible for reviewing and making recommendations regarding the following:

- 1. Applications for sign permits;**

- 2.** Applications for temporary use permits;
 - 3.** Applications for site plan review;
 - 4.** Applications for subdivision review;
 - 5.** Applications for certificates of appropriateness;
 - 6.** Applications for major and minor special use permits;
 - 7.** Amendments to adopted land use plans;
 - 8.** Amendments to the text of this Ordinance;
 - 9.** Applications for zoning map change;
 - 10.** Applications for historic district/landmark designation; and
 - 11.** Vested rights determinations requiring a public hearing pursuant to Sec. 3.21, Statutory Vested Rights Determination.
- C.** The Planning Director or designee shall be responsible for final action regarding the following:
- 1.** Interpretation of this Ordinance;
 - 2.** Administrative adjustments to the specified development standards of this Ordinance;
 - 3.** Applications for simplified site plans;
 - 4.** Applications for common signage plans;
 - 5.** Applications for home occupation permits;
 - 6.** Administrative certificates of appropriateness; and
 - 7.** Demolition by Neglect.

Sec. 2.10 Durham City-County Inspections Department

2.10.1 Establishment

The City-County Inspections Department is authorized by the North Carolina General Statutes to enforce certain State statutes, State regulations, such as the North Carolina State Building Code and local ordinances, including, but not limited to, ordinances related to zoning and development.

2.10.2 Inspections Director

The Inspections Director is designated as the head of the City-County Inspections Department and shall be responsible for administering the provisions of this Ordinance as set forth in this section.

2.10.3 Delegation of Authority

The Inspections Director may designate any staff member to represent the Director in any function assigned by this Unified Development Ordinance. The Director shall remain responsible for any final action.

2.10.4 Power and Duties

With regard to this Ordinance, the Inspections Director, or designee, shall enforce provisions of this Ordinance which pertain to new construction and the issuance of building permits and Certificates of Compliance. And shall be responsible for final action regarding:

- A.** Interpretations of matters related to the North Carolina Building Code;
- B.** Interpretations of matters related to the Flood Damage Protection Ordinance;
- C.** Applications for sign permits; and
- D.** Applications for temporary use permits.

Sec. 2.11 Other Departments

Other departments may be empowered by the governing bodies to develop, maintain and implement technical standards, specifications, and guidelines.

Sec. 2.12 Summary of Review Authority

The following table summarizes review authority under this Unified Development Ordinance.

Application or Permit	Sedimentation and Erosion Control Officer	Inspections Director	Planning Director	Development Review Board	Historic Preservation Commission	Board of Adjustment	Planning Commission	Governing Body	Section
Sedimentation and Erosion Control Officer									
Erosion Control Plan	D							<A>	Sec. 3.8
Inspections Director Action									
Sign Permit		D	R			<A>			Sec. 3.10
Temporary Use Permit		D	R			<A>			Sec. 3.12
Planning Director Action									
Interpretation of the Ordinance		R*	D			<A>			Sec. 3.1
Administrative Adjustment		R	D			<A>			Sec. 3.14
Common Signage Plan		R	D			<A>			Sec. 3.11
Home Occupation Permit			D						Sec. 3.13
Administrative Certificate of Appropriateness			D		<A>				Sec. 3.18
Demolition by Neglect (City Only)			D		<A>				Sec. 3.19
Development Review Board Action									
Site Plan Review	R	R	R/D	R/D				D	Sec. 3.7
Subdivision Review	R	R	R	D					Sec. 3.6
Historic Preservation Commission Action									
Certificate of Appropriateness			R		D				Sec. 3.18
Board of Adjustment Action									
Variance						<D>			Sec. 3.15
Appeal of Administrative Decision						<D>			Sec. 3.16
Minor Special Use Permit		R	R			<D>			Sec. 3.9
Governing Body Action									
Comprehensive Plan Amendment			R				<R>	<D>	Sec. 3.4
Text Amendment			R				<R>	<D>	Sec. 3.20
Zoning Map Change			R				<R>	<D>	Sec. 3.5
Historic District/Landmark Designation			R		<R>		<R>	<D>	Sec. 3.17
Major Special Use Permit		R	R					<D>	Sec. 3.9
Vested Rights Determination		R	R					<D>	Sec. 3.21

R = Review or Recommendation

D = Decision

A = Appeal

< > = Public Hearing Required

* Except as noted in the relevant Ordinance section.